MT LEGISLATIVE HISTORY

Chapter 666 1985

Bill H 891 S _____ Original bill & hist. ___C

H. Committee on Natural Resources

Hearing Date(s) Feb 23 ✓C

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Date Out Feb 23 ✓C

S. Committee on Judiciary

Hearing Date(s) Mar 25 ✓C

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_____ ___C

Mar 25 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LC 1236/01

HOUSE BILL NO. 891

INTRODUCED BY Abby Dodd, Selge Hinck, M. Hanson, Spaeth, Brady, Cobb, Hollenbaugh, Pattison, Krueger, Holmlund, Gillespie

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS PERTAINING TO EMINENT DOMAIN; AMENDING SECTIONS 70-30-110, 70-30-202, 70-30-203, 70-30-207, 70-30-301, AND 70-30-322, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-110, MCA, is amended to read:

"70-30-110. Survey and location of property to be taken -- greatest public good -- least private injury. In all cases where land is required for public use, the state or its agents in charge of such use may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private injury and subject to the provisions of 70-30-206. The state or its agents in charge of such public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land except from injuries resulting from negligence, wantonness, or malice."

Section 2. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the district court of the county judicial district in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within 6 months from the date the summons is served, unless the court shortens or enlarges that time for good cause, the court, sitting without a jury, shall commence its trial on the issue of whether a preliminary condemnation order should be issued."

Section 3. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must allege:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be

INTRODUCED BILL
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found in 70-30-111;

(5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the ~~county~~ judicial district and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the

public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 4. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners -- affidavit -- compensation. (1) Within ~~10~~ 30 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties

defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) that he is possessed of sufficient knowledge of the English language;

(b) that he is a resident of a county within the judicial district in which the action is pending;

(c) that he is not related within the sixth degree to any party; and

(d) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed $250 a hearing day, including expenses. The condemning party shall pay the compensation of the commissioners nominated."

Section 5. Section 70-30-301, MCA, is amended to read:

"70-30-301. Hearing -- judge to preside -- determinations by commissioners. (1) Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to meet at the time and place stated in the order appointing them, which time shall not be more than 10 days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time

appointed by the judge and within said 10-day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land.

(2) Such hearing shall be attended by and presided over by the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) The commissioners shall determine:

(a) whether an interest in the property must necessarily be taken for a public use;

(b) the minimum interest to be taken; and

(c) whether the condemnor has made a good-faith effort to purchase an interest in the property.

~~(3)~~(4) At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the following:

(a) the current fair market value of the property sought to be appropriated and all improvements thereon pertaining to the realty and of each and every separate estate and interest therein. If it consists of different parcels, the current fair market value of each parcel and each estate or interest therein must be separately assessed.

(b) if the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in current fair market value which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff;

(c) separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit shall be equal to the amount assessed under subsection ~~(3)(b)~~ (4)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the amount assessed under subsection ~~(3)(b)~~ (4)(b), the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the current fair market value;

(d) if the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad.

~~(4)~~(5) Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said

property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly."

Section 6. Section 70-30-322, MCA, is amended to read:

"70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the successor in interest shall have ~~the~~ a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at ~~a~~ the sale ~~provided--for--in-70-30-321~~. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

(3) When an interest other than a fee simple interest

in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or his successor in interest."

-End-

There were no opponents to HB 859, and the floor was opened to questions from committee.

Rep. Raney asked Rep. Ramirez about the basic applicability of the bill, and was told that the department would have the option of referring any contested water issue to the district water courts for resolution.

Rep. Miles asked Rep. Ramirez if the bill would result in increased cost to the parties involved in water hearings. Rep. Ramirez responded that routine matters would still be handled administratively, with no additional cost to the parties. He added that contested cases are almost always fought by attorneys anyway, and that referring those cases to the water courts would not involve any greater expense than is now incurred.

Rep. Ramirez closed by saying that by referring contested matters to the water courts, the department could be more certain that parties to water disputes would receive an adequate hearing. He said that providing a reliable forum for such disputes is especially necessary in view of the water marketing bill likely to be passed this session.

HOUSE BILL 891: HB 891 was introduced by Rep. Kelly Addy, District 94. Rep. Addy said HB 891 revises the state's eminent domain laws, and is the product of a consensus between landowners, industry, and public interest groups. He outlined the major changes provided in the bill, which include: a requirement that the state give 30-days notice to owners or possessors of affected property; a change in the forum for legal action to the district court; and a statement of minimum necessary interest.

Terry Murphy, representing the Montana Farmers' Union, said that group is in favor of the bill, with the amendments proposed by Rep. Addy.

Marg Green, representing the Montana Farm Bureau and Women Involved in Farm Economics, endorsed HB 891 on behalf of those groups.

Ward Shanahan, representing the Montana Mining Association, said that although HB 891 is no doubt beneficial to the landowner, it should be remembered that Montana law probably contains more safeguards for the landowner than most other states' eminent domain regulations. He said, however, that the MMA has no objection to the bill as presented by Rep. Addy. A copy of his testimony is attached as Exhibit 4.

Jim Beck, representing the Montana Highway Department, said that agency supports the bill generally, but recommended that it be amended to allow a 15 or 20-day written notice period, rather than a 30-day period, and that notification be made only to the owner, not to the person in possession of the land.

Russ Brown of the Northern Plains Resource Council rose in strong support of the bill. He said that eminent domain power is a serious burden to both the state and affected landowners. HB 891, he said, is a common-sense approach to the eminent domain issue. That group also supported the changes recommended by Rep. Addy. A copy of Mr. Brown's testimony is attached as Exhibit 5.

No opponents spoke against HB 891.

Rep. Kadas asked Rep. Addy to comment on the proposals made by Mr. Beck of the highway department, who stated that the department should notify only the landowner, and not the person in possession of the land. Rep. Addy said he understood that it might be difficult to locate the possessor of some parcels of land, while the owner could be easily traced through deeds and other filed documents. Still, he said, the state should have the obligation to notify the person who would be affected by an eminent domain action, and that person is the one who uses the land.

Rep. Krueger asked Rep. Addy to confirm his intention to strike the language of Section 5 and Rep. Addy did so.

There was no further discussion of HB 891.

HOUSE BILL 827: HB 827 was introduced by the sponsor, Rep. Earl Lory of District 59. Rep. Lory explained that HB 827 is a bill to revise portions of the state subdivision and platting act. The revisions are needed to prevent subdivisions from being developed without going through the review process, he said. Rep. Lory told the committee that only a small percentage of the subdivisions in the state are going through the review process set out in the subdivision and platting act, and the rest are being developed through family gift and occasional sales of parcels, which are not subject to review. HB 827 would "close the loopholes," he said.

Rep. Lory told the committee that it is not the intention of HB 827 to prevent the subdivision of land, but simply to see that subdivision is done in an orderly fashion, and is subject to review.

Lt. Governor George Turman spoke as a proponent of HB 287. He told the committee that he was a member of the governor's task force on infrastructure, and that one recommendation of

Steve Pilcher, representing the state water quality bureau, said that agency supports HB 768 because it simplifies the subdivision process without frustrating the intent of regulation.

There were no opponents to the bill, and no questions from committee. Rep. Bradley closed by urging a do pass vote.

EXECUTIVE ACTION:

HOUSE BILL 768: Rep. Addy moved DO PASS on HB 768. Rep. Asay moved the amendments provided by Rep. Bradley, which were unanimously approved. Rep. Addy's motion was approved, with Rep. Garcia voting against it.

HOUSE BILL 791: Rep. Kadas moved DO PASS on HB 791. Rep. Asay moved the amendments suggested by Terry Carmody. Rep. Miles suggested that the committee discuss the definitions of subdivision as provided in HB 791 and HB 827. Rep. Kadas withdrew his motion so that the committee could consider the definitions and act on both bills at a later date.

HOUSE BILL 891: Rep. Addy moved DO PASS. Rep. Addy moved that the bill be amended to insert "owner or" on page 9, line 13, following "the." That amendment was unanimously approved. Rep. Kadas moved to amend the bill by inserting on page 9, line 14, following "shall," the language "be notified by the seller by certified mail and shall". That amendment was approved unanimously. Rep. Addy moved to strike section 5 in its entirety, which was approved unanimously. Rep. Addy moved to strike "and persons in possession" on page 1, lines 19-20, which was approved unanimously.

Rep. Addy then made a substitute motion of DO PASS AS AMENDED, which passed unanimously.

HOUSE BILL 859: Rep. O'Hara moved DO PASS. Rep. O'Hara then moved the amendments proposed by the department of natural resources and conservation, which were unanimously approved. The committee then unanimously approved Rep. O'Hara's DO PASS AS AMENDED motion.

HOUSE BILL 312: Rep. Raney moved DO NOT PASS on HB 312. Rep. Krueger made a substitute motion to table the bill. Rep. Iverson explained that John Shontz, a major proponent of the bill, had indicated that there were problems with the measure, and that it should be held until after transmittal. The committee unanimously voted to table HB 312.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Feb. 23, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	X		
KADAS, Mike (Vice-Chairman)	X		
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	X		
DRISCOLL, Jerry			X
GARCIA, Rodney	X		
GRADY, Edward	X		
HARP, John			X
JONES, Tom	X		
KRUEGER, Kurt	X		
MILES, Joan	X		
MOORE, Janet			X
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	X		

CS-30

February 23 19 85

MR. SPEAKER:

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE Bill No. 391

FIRST reading copy (WHITE color)

AN ACT TO GENERALLY REVISE THE LAWS PERTAINING TO EMINENT DOMAIN

Respectfully report as follows: That HOUSE Bill No. 391

BE AMENDED AS FOLLOWS:

1) Title, line 6
Strike: "70-30-301,"

2) Page 6, line 18 through page 9, line 7.
Strike: Section 5 in its entirety
Renumber subsequent section

3) Page 9, line 13
Following: "interest, the"
Insert: "owner or his"

4) Page 9, line 14.
Following: "shall"
Insert: "be notified by the seller by certified mail and shall"

AND AS AMENDED,

DO PASS

DENNIS IVERSON, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

STATEMENT OF WARD SHANAHAN
FOR
MONTANA MINING ASSOCIATION

HOUSE BILL 891-Amendment to the Montana Eminent Domain Law

My name is Ward Shanahan, I am a member of the Board of Directors of the Montana Mining Association. I am also an attorney in Helena with some experience in trying eminent domain cases, both for the Condemnor-builder and for the Condemnee landowner.

The Montana Eminent Domain Law underwent extensive study several years ago at the hands of legislative interim committees and the University of Montana school of Law. It was also the subject of extensive amendment during the 1983 session in a bill submitted by the Northern Plains Resource Council and supported by other landowner groups. That amendment substantially increased the delay in bringing actions to trial and final resolution. While this is no doubt beneficial to the landowner, it should be remembered that the Montana Law probably contains more safeguards for the landowner than most other state laws.

HB891 as originally introduced contained a serious substantive and procedural error on page seven with regard to the powers given to the condemnation commissioners. We understand that the sponsor has agreed to remove this by deleting lines 7-13 on page seven. If this is done we would not have serious objection to the bill.

Respectfully submitted,

MONTANA MINING ASSOCIATION

Ward A. Shanahan

cc Gary Langley

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To: House Committe on Natural Resources
Fr: Russ Brown NPRC Staff

RE: Testimony in Favor of HB 891 2-23-85

MR. CHAIRMAN AND MEMBERS OF THE HOUSE NATURAL RESOURCES COMMITTEE. FOR THE RECORD, MY NAME IS RUSS BROWN AND I WORK FOR THE NORTHERN PLAINS RESOURCE COUNCIL. WE ARE RISING IN STRONG SUPPORT OF HOUSE BILL 891. (as amended by Rep. Addy)

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. WE HAVE HAD THE PLEASURE AND THE OPPORTUNITY TO TESTIFY BEFORE YOU ON NUMEROUS OCCASIONS THIS SESSION. MOST OF THE BILLS WE HAVE TESTIFIED ON HAVE BEEN THE RESULT OF HARD WORK AND COMPRIMISE BETWEEN VARIOUS ENTITIES ON ALL SIDES OF THE ISSUE. HOUSE BILL 891 IS ANOTHER ONE OF THESE BILLS.

THE EXERCISE OF THE POWER OF EMINENT DOMAIN IS A SERIOUS CONCERN FOR THOSE WHOSE PROPERTY MIGHT BE INVOLVED IN THE "TAKING". HOUSE BILL 891 ATTEMPTS TO LIGHTEN THE BURDEN ON THOSE WHO ARE BEING OR HAVE BEEN CONDEMNED WITHOUT BEING BURDENSOME TO THE ONE EXERCISING THIS SOVEREIGN POWER.

THE FIRST SUGGESTED CHANGE DEALS WITH A MANAGEMENT AND FAIRNESS QUESTION. IF A RANCHER OR FARMER FOR EXAMPLE PLAN ON SHIPPING, BRANDING, IF THEY ARE CALVING OR HAYING, IT WOULD HELP THEM IMMENSELY IF THEY WERE NOTIFIED 30 days IN ADVANCE OF A PERSON EXCERSING THE RIGHTS GRANTED THEM AS A PUBLIC USE, WHO PLANS ON BEING ON THEIR PROPERTY FOR SURVEYS OR EXAMINATIONS.

IT SEEMS THAT THE CHANGE TO JUDICIAL COURT HAS BEEN EXPLAINED QUITE WELL BY MR. ADDY.

SECTION 3 subsection (6) IS A VALID REQUEST THAT THE INTEREST SOUGHT FOR CONDEMNATION IS IN FACT THAT AMOUNT THAT IS NEEDED FOR WHATEVER THE PROPOSED "PUBLIC USE" IS. AGAIN, A RANCHER OR FARMER OR ANY BUSINESSPERSON SHOULD BE ABLE TO LONG RANGE PLAN AND KNOWING MORE ACCURATELY WHAT SEGMENT OF THEIR PROPERTY IS TO BE TAKEN, SEEMS TO BE A VERY REASONABLE REQUEST.

REALIZING THE SERIOUSNESS OF A SITUATION WHERE AN OWNER OF PROPERTY IS FACING CONDMENATION, WE SUBMIT THAT 30 days FOR A DEFENDENT TO FILE HIS STATEMENT FOR JUST COMPENSATION AS OPPOSED TO 10 days AS THE PRESENT LAW ALLOWS IS ONLY FAIR, AND SHOULD AGAIN NOT CREATE AN ADDED BURDEN TO THE ENTITY DOING THE TAKING.

THE LAST SUGGESTED CHANGE IS AN ATTEMPT TO ALLOW OWNER OR SUCCESSOR IN INTEREST A FAIR SHOT AT MAKING A BID ON A PIECE OF WHAT HAD BEEN HIS PROPERTY ONCE AND IF THE USE FOR WHICH A LAND HAS BEEN CONDEMNED HAS BEEN ABANDONED.

FINALLY, WE DO NOT THINK IS IS BURDENSOME OR UNREASONABLE TO ASK THAT THE NOTICES MENTIONED BE SENT TO THE OWNERS AND PERSONS IN POSSESSION(a possible leasee)OF THE LAND. NOT BEING AN ATTORNEY, I CAN ONLY STATE THAT THE PURPOSE OF THESE SECTIONS WAS TO INSURE, WHERE POSSIBLE, THAT DUE PROCESS IS ALLOWED THOSE WHO ARE FACING THE PROSPECT OF CONDEMNATION.

MEMBERS OF THE COMMITTEE, WE AGAIN THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOU ON A GOOD PIECE OF LEGISLATION. WE URGE YOUR UNANIMOUS SUPPORT OF HOUSE BILL 891, AND WE COMMEND THE CHAIRMAN AND MEMBERS OF THE COMMITTE FOR A JOB WELL DONE DURING THE FIRST HALF OF THIS 49th LEGISLATIVE SESSION.

RESPECTFULLY SUBMITTED.

Russ Brown

RUSS BROWN
NPRC STAFF

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. HB 891 DATE 2/23/85

SPONSOR ADDY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Mary Glenn Beaufield mod. Farm	Helena	✓	
Kathy Macefield (HPO)	Helena	X	
Russ Brown	NPRC Helena	X	
Mary Murphy	Ft. Falls	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

problems with specific language in it. Those concerns were taken care of in the amendments in the bill before the committee. It addresses an issue that does need to be addressed. He affirmed the comments of Mr. Waterman regarding the relationship of this bill to HB 265. Mike McCone, representing the Western Environmental Trade Association, believed this bill complemented SBs 418, 421, and 424 and concurred with the amendments. Sam Hofman, of the Gallatin County Agricultural Preservation Association, supported the bill. Lorents Grosfield, of Big Timber, testified there's nothing in the supreme court decisions or the Montana Constitution that gives the public the right to use any waters under the doctrine of prior appropriation.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked if there were regulations for posting these waters. Mr. Flynn responded he assumed the use of these areas is a private use. As they are private property, they would need the landowners' permission or the associations' permission to use the land. The question that comes up is the recreational use of waters as defined by the supreme court. This clarifies that decision as it refers to the use of surface waters. When you get to how the landowners' permission is to be communicated to the public, that will be gotten to in HB 911. Mr. Kelly stated the irrigation districts have easements through the private property and would be responsible for posting those facilities citing the public law.

CLOSING STATEMENT: Representative Grady stated he would support the theory this bill should be held in view of HB 265's outcome.

Hearing on HB 520 was closed.

CONSIDERATION OF HB 891: Representative Kelly Addy, sponsor of HB 891, testified this bill deals with some of the procedural aspects involved in eminent domain. It is the intent of HB 891 to give the landowner who is affected by a taking for public use some additional procedural safeguards and notice. Section 1 deals with surveying the land. The Highway Department would rather not have the duty of notifying persons in possession of the land. He will leave that to the committee's discretion. There is a lesser likelihood that the land will overlap judicial districts than it will overlap counties. They are trying to assure that the impact on the private landowner will be as moderate as possible. They are not to take any larger portion of the owner's property or for any longer duration to accomplish the intended use. This gives the defendant 30 days to file a claim for just compensation. Previously they had only 10 days. Section 5 gives the original owner a meaningful right of first refusal. When the public use is no longer in

force, the takers will offer the land for sale. Once they have the highest bid, the original owner would receive notice to come up with the highest price offered. All other things being equal, that original owner or his successors will get that land back.

PROPONENTS: Terry Murphy, representing Montana Farmers Union, thought the bill addressed a couple issues important to landowners and didn't really do any damage to anybody. Jo Brunner, representing the Montana Cattlefeeders, Montana Cattlemen, and Montana Grange, presented written testimony in support of the bill (Exhibit 8). Lavina Lubinus, representing Women Involved in Farm Economics, presented written testimony in support of the bill (Exhibit 9). Lorna Frank, representing the Montana Farm Bureau, testified in support of the bill. Tom Ebzery, Attorney, Tongue River Railroad, testified he thinks this bill corrects some things they think are fair and equitable. He thinks the Highway Department makes sense. Jim Beck, Chief Counsel, Department of Highways, offered an amendment (Exhibit 10). They had some problems with the notice provision. It is easy to search the courthouse records to determine who owns the property, but if there are leases, they are not of record. It would be difficult to determine who is in possession of the land. Phil Strope, representing the Sweetgrass County Preservation Association, testified they support this bill and the amendment. Stuart Doggett, representing the Montana Stockgrowers Association and the Association of Grazing Districts, supported the bill. Mike McCone, of the Western Environmental Trade Association, supported the bill. Russ Brown, representing the Northern Plains Resource Council, presented written testimony in support of the bill (Exhibit 11). They consider the exercise of eminent domain should not be taken lightly. The burden on that taking even as far as notification should not fall on the person in possession of the land. They feel the burden of a taking should be on the person exercising that taking, or the person exercising that power. They support the bill without the amendment. Willa Hall, of the League of Women Voters, supported the bill without the amendment.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Daniels asked about the rationale behind changing the venue from the county to the judicial district. Mr. Brown explained several years ago, there was concern expressed that if in fact their property crossed two county lines, the landowner might find it burdensome to appear in two separate counties. This was an attempt to narrow down the procedure so they could answer the question about the condemnation. Senator Daniels pointed out it could also be in two different judicial districts. Mr. Brown responded there is more possibility of its occurring in two different counties than in two different judicial districts. Senator Pinsoneault stated giving notice

to the people in possession would be the easiest thing to do. Mr. Peck asked how you would find out about an unrecorded lease if you had a 40-acre piece of land with no houses on it. It is not unreasonable to have the owner notify the person in possession of the land. Senator Pinsoneault suggested asking a neighbor. Mr. Beck asked what would happen if he didn't know or didn't give the right answer. At this stage of the game they are merely attempting to define a line or develop a line. At a later date, more intensive efforts are made. Senator Mazurek suggested requiring eveyone who has a record lease or record interest. Mr. Brown responded they found very few instances where the owner did not know who was leasing the property. Senator Mazurek commented Mr. Beck's objection is reasonable. If he goes to the courthouse and sends notice, why should he go further than that? Maybe he should tell the owner if there is someone who has a possessory interest, they should notify the Highway Department. Mr. Brown responded he could understand the concern, but the policy question is who bears the burden--the person taking the property or the person who is having his property taken? Senator Mazurek asked how they would find that out. Mr. Brown replied they should ask the owner. Mr. Beck responded they have the problem of time. They would have to go to the landowner and get him to respond, and many times they are out of state. It puts a lot of time in front of them before they can survey. Senator Towe suggested using the telephone. He also suggested putting in some language about "unless some person cannot be found after reasonable inquiry." Mr. Beck responded he had no objection to persons with a record interest.

CLOSING STATEMENT: Representative Addy stated he thinks the question is one of administrative convenience versus the rights of a person who is an owner of private property. Perhaps an additional paragraph in the letter notice to the owner tell them they are required to let the persons in possession know as well. That is something for the committee and the Department of Highways to consider. The king can do no wrong has come to mean the king can do anything he wants instead of he has to pay for a taking.

Hearing on HB 891 was closed.

CONSIDERATION OF HB 911: Representative Tom Hannah testified this bill has been introduced at the request of the House Judiciary Committee. It came out of HBs 16 and 17. HB 17 dealt with trespass. It was unacceptable to the committee and the House floor. They needed to come up with a new bill because of the problems of amending. Several of the groups involved with stream access worked out the language presently before the Senate Judiciary Committee. The major difference in this bill and HB 17 is the burden to post is on the landowner. This is a posting bill. Posting may be removed at any time.

is if a merchant restrained a shoplifter beyond the 30 minutes allowed, they would be subject to this. Senator Daniels withdrew his motion. Senator Shaw asked if this would apply if he didn't let his 16-year-old son go down and get drunk. Senator Towe responded the answer to that question is that an unemancipated child can be restrained at any time by the parents and guardians. Senator Mazurek stated the concern is if someone is walking to school and entices them into a car, they may not have enough for kidnapping, but they may have enough for unlawful restraint. Senator Brown stated you sometimes read about children who have divorced parents, and the spouse who doesn't have custody will take the kids. Will that make them subject to this? Senator Mazurek responded yes. Senator Towe suggested striking the felony provision and making it just a high misdemeanor. Senator Mazurek stated if there is enough to prosecute for a felony, they will get him for kidnapping. Senator Towe moved HB 575 be amended as follows:

Page 1, line 22.
Following: "jail"
Strike: "or state prison"

The motion carried unanimously. Senator Shaw moved HB 575 be recommended BE NOT CONCURRED IN AS AMENDED. The motion carried with Senators Blaylock, Brown, Galt, Pinsoneault, and Shaw voting in favor.

ACTION ON HB 891: Senator Daniels stated he would like to amend it regarding the judicial districts. Senator Towe moved HB 891 be amended (see standing committee report for text of amendments). The motion carried unanimously. Senator Towe suggested on page 1, after line 21, before "persons," the following be inserted: ", unless such persons cannot be found upon reasonable inquiry." Senator Mazurek commented he had a real concern about what reasonable inquiry would be and how you would know if the land were leased. Senator Towe stated they need to just make an inquiry. Do you own this land or are you leasing it? Senator Shaw stated he would like to speak on the language as it is in the bill. There is nothing wrong with the language on the bill. The only one that testified for something different is the Highway Department. Engineers working along the road know everyone who has the land leased. He leased a state school section, and they notified the state, and he hasn't been notified, and he is the one in possession. Senator Pinsoneault commented the Highway Department doesn't want to be inconvenienced. Senator Shaw moved HB 891 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 12:00 p.m.

Committee Chairman

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 032585

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen			X
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Carol Wickes Boches	Mt Coalition Against Domestic Violence	HB 793	✓	
Noreen Deal	Great Falls Mercy Home	HB 793	✓	
Linda Thompson	Victims of Domestic Violence	HB 793	✓	
Jim Kelly	Mont. Water Development Assn. Mont. Irrigators, Inc.	HB 520	✓	
Mark Aldrich	Counselor, MSLA.	HB 793	✓	
Tehmi Castro	MEA	HB 575	✓	
Beck	DOH	HB 891	✓	
Sam Hofman	APA	HB 911 HB 520	✓	
Ray Watterman	MSGA	HB 911 HB 520	✓ ✓	
Lorna Frank	Mont. Farm Bureau	HB 891 HB 911	✓ ✓	
Howard B Fredricks	Sweet Grass Co. Pres. Assn	HB 911 520	✓ ✓	
Trevor F. Taliaferro	Friendship Center Helena	HB 793	✓	
Bud Bile	Self	HB 911 520	✓	
Carol Mosher	Mont. Cow Belles	HB 911 HB 520	✓	
LORENS GROSFIELD	Self	"	✓	
Russ BROWN	NPRC Helena	891	✓	
Gail Kline (WLF)	Women's lobbying Fund	HB 793	✓	
R. A. FIS	Self & Helena Valley Irrg Dist	HB 520	✓	
Dan Heinz	Mont. Wildlife Fed	HB 911	✓	
JIM FINNI	DEPT FWP	HB 911 HB 520	✓ ✓	
Tom Ebzery	Torque River Railroad	HB 891	✓	
Tom Stars	Melville Mont	HB 911 HB 520	✓	
Stuart Doggett	Mt. Stockgrowers Mt. Woolgrowers	HB 911 HB 520	✓	
Lavina Lubinus	WIFE	HB 891		
Hans Schmeer	Montana Wildlife Fed.	HB 911	✓	
Mike Mecim	WETA	HB 891 HB 520	X	

(Please leave prepared statement with Secretary)

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Murphy	MT Farmers Union	HB 891	✓	
Kadas	#D 55	HB 576	✓	
Stiepe	Sweet Grass Co. Res Ass	HB 525	✓	
Brown	Log Log Work	520 911 511	✓	
Brady	Self	911	✓	

WITNESS STATEMENT

NAME Jo Brunner BILL NO. HB 891

ADDRESS 1496 Kodiak Road, Helena, DATE 3/25/85

WHOM DO YOU REPRESENT? Montana Cattlefeeders, Cattlemen, Grange

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Mr. Chairman, Members of the committee, for the record, my name is Jo Brunner and I represent the Montana Cattlefeeders, the Montana Cattlemen and the Montana Grange at this hearing today.

Our organizations wish to go on record as supporting the changes that HB891 offer. We approve of the thirty days written notice to the owners and that they may be able to better protect thier interests and allow them the time they need for that protection.

We ask you do concur with HB 891.

Mr. Chairman, Mr. Gene VanOosten of the Montana Cattlemen has further written testimony from his organization that he wishes to provide.

Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 032585
BILL NO. HB 891

CS-34

MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

P.O. Box 1234
Helena, Montana 59624

TESTIMONY TO BE PRESENTED

ON HOUSE BILL 891

Mr. Chairman, members of the committee, H.B. 891 provides for some very helpful and very equitable changes in the laws pertaining to eminant domain. Most landowners are ill-prepared to deal immediately or effectively with a demand for an interest in their property by a public utility or governmental agency. When a fully prepared and professional condemnor approaches a farmer or rancher or other landowner who has no experience or expertise in such matters, inequities may easily occur. By providing for 30 days notice before a survey can be made, this bill allows the landowner time to study the request and obtain legal council.

Section 5 of this bill contains another important addition to the existing eminent domain law. Subsection 3 requires the condemnation commissioners to answer the three most important questions about the whole proceeding: (1) Whether the public need is real; (2) What is the least interest necessary for the purpose; (3) Whether a proper effort has been made to purchase the interest in the property.

Mr. Chairman, the Montana Cattlemen's Association applauds this revision of the eminent domain law and asks for a "do pass."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 032585
BILL NO. HB 891

Member of the Committee

WITNESS STATEMENT

For the record my name is

NAME Lavina Lubinus BILL NO. HB 891

ADDRESS 1501 Chestnut DATE 3/25/85

WHOM DO YOU REPRESENT? Women Involved in Farm Economics

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We would like to go on record as supporting HB891 in it's present form. Most of the changes are simply common courtesy and common sense.

We urge your support of the legislation

Thank You

Lavina Lubinus

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 032585
BILL NO. HB 891

CS-34

AMENDMENT TO

HB 891

Page 1, Line 21
Following: "owners"
Strike: "and"

Page 1, Line 22
Strike: "persons in possession of the land,"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 032585
BILL NO. HB 891

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

TO: SENATE JUDICIARY COMMITTEE
FR: Russ Brown, NPRC Staff

RE: HB 891, EMINENT DOMAIN REVISIONS 3-18-85

Dear members of Senate Judiciary Committee,

On Monday, March 25, HB 891 (Addy, Yellowtail et al.), will come before the Senate Judiciary Committee. HB 891 represents comprimise, it attempts to lessen the impacts on a property owner facing comdemnation, while not adding a burden to those exercising the power of eminent domain.

HB 891 amends the law in 5 places:

* p. 1, line 20-22, provides for a 30 day notice prior to entry of land taken for public use.(Sec 1. 70-30-110)

* p. 2, line 5&6, changes county courts to judicial district, a situation that occurs now anyway. (Sec. 2. 70-30-202)

* p. 3, lines 10 & 11, requires that the interest sought for condemnation is the "minimum necessary interest". (Sec. 3. 70-30-2-3(6))

* p. 4, line 13, allows a person being condemned 30 days to respond to a preliminary condemnation order with his claim of just compensation(Sec 4. 70-30-207)

* p. 9, lines 15-18, provides the owner or successor in interest the opportunity to regain his property by matching the highest bid. (Sec. 5. 70-30-322)

This bill is a result of negotiations with the mining and utility industries, and conversations with state agencies. It passed House Natural Resources committee unanimously and got a 97-0 vote on 2nd reading.

It was/is supported by the Farm Bureau, WIFE, Farmers Union, Montana Mining Association and Northern Plains.

We will attempt to contact you prior to the hearing to answer any questions you might have. Thank you for your time and consideration.

Sincerely,

Russ Brown

Russ Brown
NPRC Staff

cc: Senator Yellowtail
Representative Addy

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 032585
BILL NO. HB 891

March 25 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 391

third reading copy (blue color)

(Senator Yellowtail)

GENERALLY REVISE THE LAWS PERTAINING TO EMINENT DOMAIN

Respectfully report as follows: That HOUSE BILL No. 391

be amended as follows:

1. Title, line 8.
Following: "70-30-110,"
Strike: "70-30-202,"

2. Page 2, lines 2 through 14.
Strike: section 2 in its entirety
Renumber: subsequent sections

3. Page 3, line 12.
Following: "county"
Strike: "judicial district"
Insert: "county"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek Chairman.